

## **REMARKS**

Claims 103-132 are pending in the application. Claims 116-118 and 125-127 are cancelled without prejudice. Claims 103, 109, 115, and 124 are amended. Support for the amendment to add "human" before subject is found throughout the specification and the early acknowledgement in prosecution that the specification is enabling for a method of testing humans. Support for the amendment to the claims to compare the prognosis, survival and response therapy for a metastatic melanoma patient with a LOH to a metastatic melanoma patient without a LOH is found throughout the specification and in particular at page 16, lines 7-9, page 17, lines 4-6 and Example 2 at page 31 line 9 through page 36, line 25. The amendments to claims 115 and 124 are supported by page 31, lines 13-15.

## ***Drawings***

A further set of replacement drawings is provided herewith complying with the requirements set forth in the Office Action (recitation of "FIG").

## ***Claim Rejections - 35 U.S.C. § 112***

In the Office Action, claims 103-132 are rejected under 35 U.S.C. 112, first paragraph, as lacking enablement because of the examiner was not convinced that a control human DNA from blood would not show a LOH for the markers. OA at 8. At the interview it was agreed that Applicant's declaration explaining with reference to his own publications that normal subjects were found to have normal (no LOH) in their blood overcame the rejection.

Additionally, claims 115-117 and claims 124-126 were rejected as not enabled for cancer therapies. Claims 118 and 127 were indicated as enabled. As discussed at the

interview claims 115 and 118 have been combined, as have claims 124 and 127. Claims 116-117 and 125-126 have been cancelled. The enablement rejection should be withdrawn.

***Claim Rejections - 35 U.S.C. § 103***

In the Office Action, claims 103-117, 119-126, and 128-132 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Soengas, et al. (Nature, 2001, volume 409, pages 207-211) in view of Fujiwara et al. (Cancer Research (1999) volume 59, pages 1567-1571). OA at 24. As an initial matter, claims 116-117 and 125-126 have been cancelled, rendering the rejection moot as to those claims.

As discussed at the interview the amendments to independent claims 103, 109, 115, and 124 to compare the prognosis, survival and response to therapy for a metastatic (or Stage IV) melanoma patient with a LOH to a metastatic (or Stage IV) melanoma patient without a LOH would overcome the pending obviousness rejection. The examiner indicated that an additional search may be necessary prior to allowance of the claims.

**CONCLUSION**

In view of the foregoing, it is submitted that the claims are in condition for allowance. A Notice of Allowance is requested. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to contact the undersigned at 310-788-3210.

Respectfully submitted,

Perkins Coie LLP

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/ Michael J. WISE /  
Michael J. Wise  
Registration No. 34,047

**Correspondence Address:**

Customer No. 34055  
Perkins Coie LLP  
P.O. Box 1247  
Seattle, Washington 98111-1247  
(310) 788-9900